

John Earl of Kildare, Son, Heir
and Issue in taile of *Wentworth*, late
Earl of *Kildare*, and *Elizabeth* Coun-
tess of *Kildare*, his Wife,

Appellant.

Sir Arthur Shaen, Baronet,
Son, Heir and Administrator of } Respondent:
Sir *James Shaen*, deceased,

March
17 ~~May~~, 1657. **B**Y Articles made between *Wentworth* late Earl of *Kildare*, and *John* Earl of *Clare*, in Consideration of a Marriage to be had between the said *Wentworth* Earl of *Kildare*, and the Lady *Elizabeth*, one of the Daughters of the said Earl of *Clare*, and of 6000*l.* Marriage Portion paid with her to the said Earl *Wentworth*, He was to settle his Mannors and Lands, in such manner, That he was to be but Tenant for life, remainder to the first and every other Son of that Marriage in taile Male (and particularly of the Lands in question.)

15 Apr. 1658. The Marriage was had: And
3 and 4 May, 1658. By Lease and Release a Settlement was then accordingly made and executed by *E. Wentworth*, whereby the Lands in question, called *Killinure* and *Bellingclough* in the County of *Westmeath* (*inter alia*)

Were settled to the use of *E. Wentworth* for life, and from and after his decease to his eldest Son, and all other Sons of that Marriage in taile male.

An. 1663. On Earl *Wentworth's* decease, by virtue of the said Marriage Settlement all his Mannors and Lands, (and particularly the Lands in question) vested in and came to the Appellant *John* Earl of *Kildare*, as issue in taile, and eldest Son of that Marriage.

Sir *Arthur Shaen*, upon pretence that Earl *Wentworth* the Appellants late Father had

30 Dec. 1656. For 1250*l.* Leased to Sir *Ja. Shaen* the Lands in question for 41 years at 110*l.* per Annum Rent. Which (if so) that Lease expired in anno 1697. And that afterwards

24 Dec. 1659. Earl *Wentworth* for 450*l.* made another Lease of the same Lands to *John Humphryes* for 99 years at 100*l.* per ann. Rent. And that
25 and 26 May, 1660. Earl *Wentworth*, together with *John* Earl of *Clare*, and *Robert Boyle* Esq; for 1000*l.* conveyed the Fee of the same Lands to the late *E. of Anglesey* and others, and that both the 99 years term and Fee were trusts for Sir *James*.

An. 1696. Sir *Arthur Shaen* (without making the Appellant *E. John* a party) Exhibits a Bill in the Chancery in Ireland, only against *William Handcock* and *Leonard Hatfield* (the Appellants Tenants of the Lands in question) To compel them to attorn Tenants to him, and to pay him the Rents of the premises, incurred since the 25th of March 1686. and the growing Rents thereof, and to have the possession of the Lands in question decreed him.

And altho the said *Handcock* and *Hatfield* (the Appellants Tenants) in their Answer to the Respondents said Bill, Insisted on the Appellants Title, by the said Marriage Settlement, and that they were then Tenants to him;

3 Feb. 1699. Yet notwithstanding, on the hearing that Cause, and on producing and proving the Appellants Deeds of Settlement and Title, That Court, without ever calling or hearing the Appellant, or giving him any opportunity of making out his undoubted right and title to the Lands in question, Decreed Sir *Arthur* the possession of the Appellants Freehold Estate, and that the Appellants Tenants should pay to Sir *Arthur* the Rents thereof, incurred since the 25th of March 1686.

Which Decree is very injurious to the Appellant, and not warrantable. For that

In An. 1683. As soon as the Appellant came of Age he exhibited his Bill against the said Sir *James Shaen*, to discover his pretences, and for what Considerations; and against *Handcock* and *Hatfield* to produce their Lease, and pay him their Rents; but Sir *James*, tho he lived 12 years after (until 1695.) he never thought fit to Answer, well knowing that his pretences were for no Considerations.

And *Handcock* and *Hatfield* set up Incumbrances prior to the Appellants Settlement; by means whereof, and by taking Advantage of the Appellants Absence, he hath been kept out of possession and out of his Rents for near 15 years.

There is no proof in the Cause that Sir *James* paid either the 1250*l.* Consideration, or the 110*l.* per annum Rent, mentioned in the 41 years Lease; or the 450*l.* Consideration, or the 100*l.* per annum Rent, mentioned in the Lease for 99 years; or that Sir *James Shaen* was ever in possession by virtue of either of the said Leases.

Not a. It appears by this Appellants Marriage Settlement (to which Sir *James Shaen* must be presumed to be privy (as having married this Appellants Aunt, and been acquainted with the Settlements of the Family) that Earl *Wentworth* was only Tenant for life, and had no power to make the Lease for 99 years, or the Conveyance of the Inheritance in anno 1660.

It appears, that altho Sir *James Shaen* lived from 1656 to 1695, near 40 years after his pretended Titles, yet he never had any possession under any of them, or ever received any Rent of the premises in question, in any other manner than as *Handcock* detained and applied the Rent towards satisfaction of a Debt due to him on Bond from Sir *James Shaen*.

However, it could by no rules of Law or Equity be justified that this Appellants Title of Freehold, that appeared to be settled on so valuable a Consideration as Marriage, and a Marriage Portion, should be determined in Equity without a Tryal at Law; or this Appellant being made a party, that he might have had an opportunity of being heard, and contesting Sir *Arthur's* unheard of Claims and pretences: And that the Appellants Tenants should be decreed to deliver possession, and pay 15 years Arrears of Rent of the premises to the Respondent: When, as it did not, and could not appear, that Sir *Arthur* had any just Title either in Law or Equity, either to the Possession or Rents, or can the Tenants be indemnified, until this Appellant was made a party, and his Title determined.

Therefore it seems highly unreasonable and unjustifiable, for a Court of Equity, upon such stale demands, and concealed titles, (which were avoided to be justified, by Sir *James Shaen's* refusing to put in an Answer to the Appellants Bills, to discover what Deeds were made to him, and upon what Trusts, and for what Considerations) to Decree this Appellants Tenants to deliver possession, and pay 15 years Rent arrear, without this Appellant's being made a party, and heard; When by both Bill and Answer, and the proofs in the Cause, It fully appeared that the only question was, whether this Appellant or Sir *Arthur Shaen* was entitled to the Possession and Rents of the premises. If such proceedings may be admitted, Lords and Landlords, Freeholds and Inheritances, during their Infancies and Travels, may, by Decrees, be determined, on Tenants Answers, Defaults, Combinations, or the insufficiencies of their proofs, when it may be impossible for them to make out their Landlords titles, or the Settlements of Families, which are not in their hands.

All which Proceedings of the said Respondent, and the said Decree thereon made, in a Court of Equity, to deprive the Appellant of his Freehold Estate, without hearing what he could object against the Respondents Demands, and the same being contrary (as the Appellant humbly conceives) against all methods of Proceedings in the Courts of Law and Equity, to determine, and dispose of the Appellants just right, without his being first duly summoned to appear, and thereby have an opportunity allowed him, for the defence of his Title: And therefore the Appellant hopes this Supreme Court of Judicature will in their great Wisdom relieve the Appellant in such manner as the nature of his Case shall require.

James Shaen